



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

April 29, 1939

Hon. H. Edward Johnson
County Attorney
Hood County
Granbury, Texas

Dear Sir:

Opinion No. 0-246
Re: Commissions allowed county
treasurer under Art. 3941,
R. G. S. 1925.

Your request for an opinion as contained in your letter of April 20th has received the attention of this Department. The following portion is taken from your letter:

"In this county the county treasurers salary is on a one per cent commission basis. Recently the Commissioners Court of this County passed an order to refinance certain of their bonds, in order to obtain sufficient funds for the purchase of a right of way for a new State Highway. The County issued warrants with which to purchase the right of way, fence posts, truck hire, etc. and which warrants were issued against the Road and Bridge Fund, and which warrants were registered by the County Treasurer. The county Treasurer was directed not to write the checks to cover the warrants in question, as these warrants were paid upon presentation by the holders thereof at a Bank in Dallas County, Texas, thru the instructions of an agency handling the financing of the warrants, and which funds in said Dallas County, Texas, Bank were placed there by such agency for such purpose. These warrants are to be taken up later by interest bearing time warrants.

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"Under the circumstances above related, is the County Treasurer entitled to her usual commission as stated above for the issuance of such warrants and the expenditure of county funds as evidenced by such warrants?

"There are also a number of interest bearing time warrants issued by this county during the years of 1936, 1937 and 1938 for certain road machinery and these warrant are payable out of the Road and Bridge Fund of this County. These warrant are for various sums or denominations and the interest due on same is payable on April 15th of each year. The agency handling the refinancing of these warrants has given the County Treasurer of this county instructions not to pay these warrants but to submit them to them for payment as they come due, and have further refused to pay the County Treasurer her commission for such expenditure of the county funds.

"Under these circumstances, wouldn't the County Treasurer be entitled to her commission irrespective of who or what agency paid the warrants in question?"

Article 3941, H. C. S. of Texas, 1925, relevant to the commissions to be paid or allowed the county treasurer and which fixes the maximum rate allowable as compensation to the county treasurer, reads in part as follows:

"....For receiving all moneys, other than school funds, for the county, not exceeding two and one-half per cent, and not exceeding two and one-half per cent for paying out the same; provided, that he shall receive no commissions for receiving money from his predecessor nor for paying over money to his successor in office."

In allowing commissions to the county treasurer within the maximum amount authorized and upon the percentage fixed, it will be noted that the above statute provides for

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such commissions to be paid on "moneys" received and "moneys" expended. Under the recent order of your Commissioners' Court and such warrants issued, apparently, they are not issued for present payment against funds held in the Road and Bridge Fund, but payable from proceeds of bonds to be sold at a later date, and are mere evidence of indebtedness of the county and not intended to be a circulating medium as to any current funds of the county. Such warrants as mentioned, as well as those issued in 1936, 1937 and 1938 for certain road machinery, appear to be similarly classified, as evidence of the county indebtedness or obligations - no funds belonging to the county being used by such financing agency mentioned.

Under the decision of McKinney vs. Robinson, County Judge, 84 Tex. 489, which appears applicable to the above facts, such warrants as registered and described above do not constitute a disbursement of county funds or "moneys" paid out. As said in the McKinney case, supra,

"Had the county executed its promise to pay in any other form a specified sum at a future date, it could not be contended that upon its delivery by the treasurer he would be entitled to commissions on it as for moneys paid out."

We respectfully advise that it is the opinion of this Department that a county treasurer is not entitled to commissions on scrip or warrants merely registered and to be converted later into time warrants and where such time warrants become due and are paid by funds of finance agency other than county funds, likewise, no commission is payable.

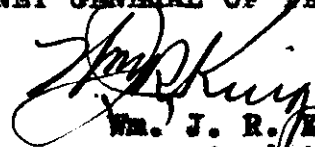
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Trusting the above answers your question,
we remain

Yours very truly

ATTORNEY GENERAL OF TEXAS

By


Wm. J. R. King
Assistant

WmK:AW

APPROVED:


ATTORNEY GENERAL OF TEXAS